

**UNITED STATES BANKRUPTCY COURT**  
**Southern District of New York**

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SECURITIES INVESTOR PROTECTION  
CORPORATION,

Adv. Pro. No. 08-01789 (BRL)

Plaintiff-Applicant,

SIPA LIQUIDATION

v.  
BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

(Substantively Consolidated)

Defendant.

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In re:

BERNARD L. MADOFF,

Case No. 09-11893 (BRL)

Debtor.

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IRVING H. PICARD, Trustee for the Liquidation  
Of Bernard L. Madoff Investment Securities LLC,

Adv. Pro. No. 10-05191 (BRL)

Plaintiff,

**ANSWER**

**AND**

**COUNTERCLAIM**

v.  
FGLS Equity LLC

Defendant.

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Defendant FGLS Equity, LLC, by its attorney Marc Bogatin, as its Answer to the  
Complaint herein, states:

1. Denies the allegations of ¶¶ 1, 2, 3, 4, 5, 6, 15, 16, 17, 35, 36, 37,  
38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 and 52 of the Complaint.
2. Admits the allegations of ¶¶ 7, 33, 34, 39, and 51 of the Complaint.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of ¶¶ 8, 9, 10, 11, 12, 13, 14, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, and 32 of the Complaint.

**FIRST AFFIRMATIVE DEFENSE**

4. The Complaint fails to state a cause of action.

**SECOND AFFIRMATIVE DEFENSE**

5. For several years defendant maintained an account at BLMIS, for the purpose of securities trading and investment. Defendant deposited its funds into the BLMIS account, in the belief that Madoff was investing the funds on behalf of defendant.

6. During the period of time that FGLS maintained the account at BLMIS, FGLS, together with thousands of other investors and the regulatory authorities, including the SEC itself, was unaware that Madoff was a fraud and Ponzi scheme operator.

7. From time to time, FGLS deposited funds into its BLMIS account.

8. From time to time, FGLS withdrew funds from its BLMIS account.

9. All such deposits and withdrawals were made in the ordinary course of business. In most investment accounts, deposits and withdrawals are part of the ordinary course of business of the account. The FGLS deposits and withdrawals were of a kind, and of a nature, as is standard and ordinary for investment accounts.

10. All transfers at issue in this litigation were made in the ordinary course of business, as that term is used in the Bankruptcy Code.

11. Under 11 U.S.C. § 547(c)(2) the trustee may not recapture the transfers at issue, as they were made in the ordinary course of business.

12. The trustee has no standing to bring this action, as the transfers in question were all made in the ordinary course of business.

### **COUNTERCLAIM**

13. Defendant FGLS Equity, LLC (“FGLS”) is a New York limited liability company.

14. FGLS maintained an investment account with Bernard L. Madoff Investment Securities LLC (“BLMIS”). The purpose of the account was ostensibly for the purchase and sale of securities. FGLS had no knowledge that Madoff was a fraud and Ponzi scheme operator.

15. FGLS received regular periodic account statements from BLMIS.

16. The last account statement received by FGLS from BLMIS reflected an account balance of \$12,245,897.63 as of November 30, 2008.

17. FGLS is owed \$12,245,897.63 by BLMIS.

18. On June 16, 2009 FGLS submitted a customer claim in the BLMIS SIPA liquidation/bankruptcy proceeding.

19. As the FGLS claim is a valid customer claim, it should be allowed in the full amount of \$12,245,897.63.

WHEREFORE, defendant FGLS Equity, LLC demands judgment dismissing the Complaint, and granting FGLS judgment on its Counterclaim, by entry of an order directing allowance of the FGLS claim in the amount of \$12,245,897.63, together with costs, and such other and further relief as is just and proper.



Dated: May 25, 2011  
New York, NY

MARC BOGATIN  
Attorney for Defendant  
277 Broadway, Suite 900  
New York, NY 10007  
212-406-9065

TO: BAKER & HOSTETLER

UNITED STATES BANKRUPTCY COURT  
Southern District of New York

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IRVING H. PICARD, Trustee for the Liquidation  
Of Bernard L. Madoff Investment Securities LLC,

Adv. Pro. No. 10-05191 (BRL)

Plaintiff,

**AFFIRMATION  
OF  
SERVICE**

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v.

FGLS Equity LLC

Defendant.

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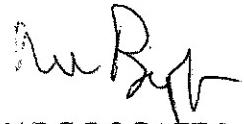
MARC BOGATIN, pursuant to 28 U.S.C. § 1746, affirms and declares the  
following under penalty of perjury:

1. I am attorney for defendant FGLS Equity LLC.

2. On May 26, 2011, I served the following, by U.S. mail, with a copy of defendant's Answer and Counterclaim:

Jonathan New, Esq.  
Baker & Hostetler  
45 Rockefeller Plaza  
New York, NY 10111

Dated: May 26, 2011  
New York, NY

  
MARC BOGATIN  
Attorney for Defendant  
277 Broadway, Suite 900  
New York, NY 10007  
212-406-9065